



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0082]

Entry-Level Driver Training: Western Area Career and Technology Center; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption application from Western Area Career and Technology Center (WACTC). WACTC requested an exemption from the theory and behind-the-wheel (BTW) instructor requirements contained in the entry-level driver training (ELDT) regulations for one prospective instructor. FMCSA analyzed the exemption application and public comments and determined that the application lacked evidence that would ensure a level of safety equivalent to or greater than would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 366-2722; richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number (“FMCSA-2022-0082”) in the “Keyword” box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “View Related Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number (“FMCSA-2022-0082”) in the “Keyword” box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The ELDT regulations, implemented on February 7, 2022, established minimum training standards for individuals applying for certain commercial driver's licenses (CDLs) and defined curriculum standards for theory and BTW training. It also established an online training provider registry (TPR), eligibility requirements for providers to be listed on the TPR, and qualification requirements for instructors. Under 49 CFR 380.713, a training provider must use instructors who meet the definitions of "theory instructor" and "BTW instructor" in 49 CFR 380.605. The definitions of "theory instructor" and "BTW instructor" in 49 CFR 380.605 require that instructors hold a CDL of the same (or higher) class, with all endorsements necessary to operate the commercial motor vehicle (CMV) for which training is to be provided, and have either: (1) a minimum of two years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement; or (2) at least two years of experience as a BTW CMV instructor.

Applicant's Request

WACTC requests an exemption from 49 CFR 380.713, which requires a training provider to use instructors who meet the definitions of "theory instructor" and "BTW instructor" in 49 CFR 380.605. WACTC specifies that it would like to use one driver training instructor, Drew Ley, who does not have two years of required driving experience with a Class A CDL. WACTC states that it has been difficult to find qualified instructors. WACTC stated that Mr. Ley would meet the ELDT regulation's requirement for two years of driving experience with a Class A CDL in August 2022.

WACTC states that it conducts monthly classes in which students achieve 160 hours of practical training, with four students per class. The ratio of instructor to students "provides a more individualized training approach as well as the ability to address individual student needs and/or concerns as they may arise." According to WACTC, the

impact of this exemption being denied would be devastating not only to its CDL program, but to the Adult Education Department as a whole. WACTC asserts that its CDL program is the most popular and successful program offered and helps stabilize other struggling programs through a steady stream of revenue.

IV. Method to Ensure an Equivalent or Greater Level of Safety

WACTC believes that Mr. Ley makes up for his failure to have two years of required driving experience through his experience with the FMCSA regulations and his other qualifications. According to WACTC, prior to FMCSA's implementation of the ELDT regulations, Mr. Ley successfully trained four of its classes and achieved a 100% student completion rate. When he was an employee of the Commonwealth of Pennsylvania DOT (PennDOT), Mr. Ley previously audited and verified third-party testing sites, routes, and CDL examiners to assure compliance with PennDOT regulations. He also assisted in the training and bi-annual reviews of experienced and new CDL examiners and has experience operating Class B vehicles with school bus and passenger endorsements. In addition, Mr. Ley has obtained a School Bus Instructor Certification, Certified Inspection Mechanic (class 7), certification as a licensed private Class C instructor, and has had a Class A CDL for a year and a half without restrictions. A copy of WACTC's application for exemption is available for review in the docket for this notice.

V. Public Comments

On June 15, 2022, FMCSA published notice of WACTC's application for exemption and requested public comment [87 FR 36202]. Six comments were filed in response to the exemption request, five from individual commenters and one from the Owner-Operator Independent Driver's Association (OOIDA). Four commenters, including OOIDA, opposed the exemption request, while two others offered no opinion either for or against the exemption request.

OOIDA cited its participation as a primary industry stakeholder on the Entry-Level Driver Training Negotiated Rulemaking Committee (ELDTAC) when the “framework” of the ELDT rule was agreed upon by the Committee. OOIDA supported the provision in the ELDT rule that required driving experience for training instructors because OOIDA believes that experience is essential to provide comprehensive training to entry-level drivers. OOIDA believes there is no substitute for an experienced BTW trainer. According to OOIDA, exempting instructors without driving experience will not result in an equivalent or greater level of safety. OOIDA further added that the delayed implementation date of the ELDT regulations from 2020 to 2022 allowed even more time for training providers to obtain the requisite experience.

Other individual commenters who filed in opposition also cited Mr. Ley’s lack of experience. A commenter stated that “CDL drivers with less than two years of experience are a hazard to new drivers as they lack the experience to understand safe operation of a tractor trailer.” Another commenter added that in their opinion, “it takes much more than one year of ‘real’ driving experience, not just holding a CDL to gain any experience that is worthy of passing along.”

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated WACTC’s application and the public comments. When the Agency established the ELDT regulations, it determined that two years of experience driving a CMV is the minimum qualification standard, reflecting the opinion of numerous commenters to the ELDT Notice of Proposed Rulemaking. Furthermore, WACTC indicated in its application that the exemption, if granted, would only be necessary until August 2022, when Mr. Ley will have had his Class A CDL for the required two years.

The Agency concurs with commenters that if it allows an individual instructor to provide ELDT without the required driving experience, it could open the door for similar exemption requests on a widespread basis. Such a result would be inconsistent

with a primary goal of the ELDT regulations, which was to improve highway safety by establishing a uniform Federal minimum ELDT standard.

FMCSA concludes that WACTC has presented insufficient evidence to establish that not complying with the provisions of the ELDT regulations relating to driving experience requirements for CMV instructors would meet or exceed the level of safety provided by complying with the ELDT regulations. In addition, based on the information provided by WACTC that Mr. Ley would meet the requirement for two years of driving experience with a Class A CDL in August 2022, the request is now moot.

For the above reasons, WACTC's exemption application is denied.

Robin Hutcheson,
Administrator.

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